

# OFFICE OF THE ATTORNEY GENERAL

83-00012



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OCT 14 1982

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State Office Building  
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PUBLIC SERVICE COMMISSION - RADIO  
UTILITIES - FEES  
Radio utility inspection and  
supervision fee discussed.

Dear Commissioners:

This letter is in response to your letter of August 10, 1982, in which you requested an opinion respecting the following part of Code of Alabama 1975, § 37-4-116:

Each radio utility, as defined in this article, doing business in this state and subject to the control and jurisdiction of the commission with respect to its rates and service regulations, shall pay annually to the commission, on or before February 1 of each year, a fee of \$25.00 for the inspection and supervision of such business....

Specifically, you stated:

Several companies and/or individuals hold more than one certificate to operate in Alabama and we have had some problems over the years concerning the amount of inspection and supervision fees owed by these companies and/or individuals.

Does the \$25.00 fee apply only to each legal entity or does it apply to each outstanding certificate?

I understand your question to be whether each person or organization which owns or operates a radio utility system is obligated to pay one inspection and supervision fee of \$25.00, regardless how many radio utility systems or facilities are owned or operated by such person or organization, or whether persons or organizations operating more than one radio utility system or having facilities subject to more than one certificate of convenience and necessity are obligated to pay a fee of \$25.00 annually for each such system or facility? Subject to two caveats, this question may be resolved by the Commission in its discretion.

Code of Alabama 1975, § 37-4-117 states:

For all the purposes of this article, the commission may, in its discretion, deem and treat any radio utility, the property of which is operated in connection with or as a part of a general system of any other radio utility and all of the capital stock of which or substantially all of the capital stock of which is owned or controlled by such other radio utility, or by any person or persons who own or control all of the capital stock or substantially all of the capital stock of such other radio utility, as a part of or consolidated with such owning or controlling radio utility or such other radio utility whose stock is so owned or controlled. (Emphasis added)

The inspection and supervision fee established in § 37-4-116 applies to each radio utility. The Commission may deem and treat each radio utility system as a separate radio utility, or pursuant to § 37-4-117, the Commission, in its discretion, may deem and treat all the systems and facilities in the state operated in connection with or as a part of a general system of radio utilities and owned or controlled by the same person or organization as one radio utility for all purposes of Article 4 of Title 37 (the Alabama Radio Utility Act), including the payment of the annual inspection and supervision fee.

However, as I mentioned, two caveats apply to the Commission's exercise of the discretion granted it in § 37-4-117. First, the Commission must be consistent in its actions. It may not decide that an organization which operates several radio utility systems is required to pay only one inspection and supervision fee in one year and decide in the following year that a separate fee is applicable to each radio utility system operated by the organization. Second, the Commission should treat operations which are similarly situated in a uniform fashion. In Mobile County Gas District v. Mobile Gas Service Corporation, 284 Ala. 664, 227 So.2d 565 (1969), the Alabama Supreme Court said:

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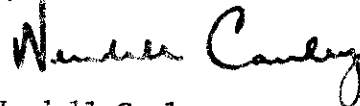
[I]t is essential that administrative rulings be consistent and that a radical departure from established interpretation and practice cannot be made except for compelling reasons. To act in one manner in one case and the opposite manner in another case, where the circumstances are the same in all material respects, would be to act arbitrarily or, at best, unreasonably. 227 So.2d at 571.

The Commission may exercise the discretion granted it by the Legislature in § 37-4-117, but it must do so in a consistent fashion unless there are compelling reasons for departing from previously established practices or interpretations.

I hope this sufficiently answers your question. I will be glad to respond if you require additional assistance.

Sincerely,

CHARLES A. GRADDICK  
Attorney General  
By-



Wendell Cauley  
Assistant Attorney General